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FILED  
HARRISBURG, PA

MAY 06 2002

MARY E. D'ANDREA, CLERK  
Per [Signature]  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,

Plaintiff

vs.

PAUL EVANKO, MARK CAMPBELL,  
THOMAS COURY, JOSEPH WESTCOTT,  
HAWTHORNE CONLEY,

Defendants

NO. 1:CV-01-0084  
(Judge Caldwell)

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants Paul Evanko, Mark Campbell, Thomas Coury, Joseph Westcott and Hawthorne Conley, by and through their attorneys, Syndi L. Guido, Deputy General Counsel, Barbara L. Christie, Chief Counsel, Pennsylvania State Police, and Joanna N. Reynolds, Assistant Counsel, Pennsylvania State Police, hereby move this court to enter judgment in their

favor and against plaintiff in the above case. The defendants base their motion on the following legal arguments:

1. There is no genuine issue as to any material fact and the defendants are entitled to judgment as a matter of law.
2. Qualified immunity bars the plaintiff's constitutional claims.
3. Plaintiff's claim that the defendants conspired to violate his constitutional rights under Pennsylvania tort law is barred by sovereign immunity.
4. Plaintiff's claims are not actionable because he suffered no adverse employment action.
5. Plaintiff's First Amendment retaliation claim fails because:
  - (a) the defendants did not retaliate against plaintiff for any exercise of protected speech; and
  - (b) the government's interests outweigh the plaintiff's alleged interest in speaking or not speaking on a matter of public concern.
6. Plaintiff's Fourth Amendment claim fails because no seizure of the plaintiff occurred. Assuming, arguendo, that a seizure of the plaintiff occurred, such a seizure was reasonable under the Fourth Amendment.
7. Plaintiff's conspiracy claim must be dismissed because he is unable to establish that the defendants agreed to violate any of his constitutional rights.

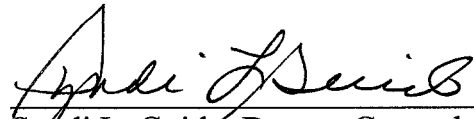
8. In support of this motion, the defendants also rely on the memorandum of law to be filed in this case, along with the exhibits to be filed therewith.

WHEREFORE, the defendants respectfully request that judgment be entered in their favor and against the plaintiff.

Respectfully submitted,

JAMES M. SHEEHAN  
General Counsel  
Commonwealth of Pennsylvania

By:

  
Syndi L. Guido, Deputy General Counsel  
Barbara L. Christie, Chief Counsel  
Joanna N. Reynolds, Assistant Counsel

Governor's Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 783-6563

(Counsel for Defendants)

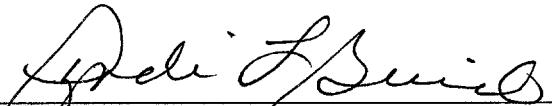
Dated: May 6, 2002

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,	:	
	:	
Plaintiff	:	NO. 1: CV-01-0084
	:	(Judge Caldwell)
vs.	:	
	:	
	:	CIVIL ACTION - LAW
PAUL EVANKO, MARK	:	
CAMPBELL, THOMAS COURY,	:	JURY TRIAL DEMANDED
JOSEPH WESTCOTT,	:	
HAWTHORNE CONLEY,	:	
Defendants	:	

**CERTIFICATE OF NONCONCURRENCE**

Counsel for the defendants certify that they sought the concurrence of plaintiff's counsel, Don Bailey, in defendants' motion for summary judgment. Mr. Bailey does not concur in defendants' motion.

  
Syndi L. Guido, Deputy General Counsel  
Barbara Christie, Chief Counsel  
Joanna N. Reynolds, Assistant Counsel

Governor's Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
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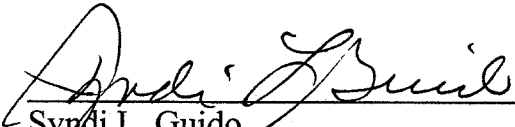
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DARRELL G. OBER,	:	
	:	
Plaintiff	:	NO. 1: CV-01-0084
	:	(Judge Caldwell)
vs.	:	
	:	
	:	CIVIL ACTION - LAW
PAUL EVANKO, MARK	:	
CAMPBELL, THOMAS COURY,	:	JURY TRIAL DEMANDED
JOSEPH WESTCOTT,	:	
HAWTHORNE CONLEY,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of Defendants' Motion for Summary Judgment and Statement Of The Material Facts As To Which There Is No Genuine Issue To Be Tried was served on plaintiff's counsel, by first-class mail, addressed as follows:

Don Bailey, Esquire  
4311 North 6<sup>th</sup> Street  
Harrisburg, PA 17110

  
\_\_\_\_\_  
Sydni L. Guido  
Deputy General Counsel  
Governor's Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101

Dated: May 6, 2002